IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.859 OF 2006

Shri Gajabhau Namdeo Kutal
& Anr. ..... Appellants.
(Original Defendants)

V/s

Shri Revaji Namdeo Kutal .... Respondent.
(Original Plaintiff)

Mr. Pankaj Das for appellants.

Mr. P.S. Dani for the respondent.

CORAM: V.M. KANADE, J.
DATE : 6th September, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of appellants and the learned Counsel appearing on behalf of the respondent.

2. The original plaintiff filed a suit against appellants herein for a declaration and injunction restraining them from interfering with possession of the plaintiff in Gat No.135 admeasuring 35R. Defendants filed their Written Statement and counter-claim. The Trial Court decreed the suit of the respondent - plaintiff and dismissed the counter-claim which was filed by the appellants herein. This order has been confirmed by the Lower Appellate Court in appeal which was filed by the appellants herein. Being aggrieved by the aforesaid two orders, appellants have preferred this Second Appeal.

3. It is submitted that both the Courts below had erred in not accepting the Commissioner's map which was brought on record at Exhibit-83. It is submitted that the Lower Courts had erred in assessing the area of Pot Kharaba on the basis of 7 X 12 extract and further erred in recording a finding that there was a boundary between two properties though there were no boundary marks fixed by any surveyor. Further, it is submitted that the plaintiff has not proved his possession and though Commissioner had given a report, stating therein that Plaintiff had encroached on Defendants' property, the Commissioner's report was discarded. The learned Counsel for appellants further submitted that the Trial Court also had erred in holding that there was a partition between the parties and that the Trial Court should have appointed T.L.R. as Court Commissioner for measurement of the property.

4. It is not possible to accept the submissions made by the learned Counsel for appellants. No substantial question of law is raised by appellants in this second appeal. All these submissions are in respect of finding of facts which are recorded by both the Courts below. The Commissioner's report has been challenged by the plaintiff and, consequently, both the Courts below have not relied on the Commissioner's report in view of answers which are given by the Commissioner in the cross-examination by the plaintiff. In this case, concurrent finding of fact has been recorded by both the Courts below. No case is made out for interfering

with the impugned judgment and order passed by both the Courts below. Hence, the Second Appeal is dismissed.

(V.M. KANADE, J.)